

**From:** Gilbert, Joel </O=BALCH/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JGILBERT>  
**Sent:** Tuesday, May 24, 2016 11:16 AM  
**To:** 'David Roberson' <droberson@drummondco.com>; 'mikethompson@thompsoncontractor.com'; 'Van Richey (vrichey@american-usa.com)'; 'Godfrey, Mike (Environmental)' <JGODFREY@southernco.com>; 'Susan Comensky' <SCOMENSK@southernco.com>  
**Subject:** AJE Update on Community Outreach / EPA Tarrant Activities / Etc. (Attorney Client Communication / Privileged & Confidential)  
**Attach:** House Oversight Committee.msg; Scanned from CNCLSHRP.PDF; EPA\_1.pdf

---

**Attorney Client Communication / Privileged & Confidential**

**Congressional Oversight Hearing**

On May 18th, we were contacted by Rep Palmer's DC office, regarding a Congressional Oversight Committee hearing scheduled for the next morning concerning EPA employee misconduct. Palmer's office asked if we could make sure Palmer was up to speed on the North Birmingham / Tarrant issues and help him develop some talking points for the hearing. Working with Jeff Wood in Balch's DC office, we developed some talking points concerning EPA's activities in Tarrant based on the affidavits Get Smart obtained through its community outreach work. Attached is an email from Jeff Wood summarizing the hearing which also provides a link to a recording of the hearing and an article concerning the hearing. If you would like to view Rep. Palmer's remarks and questions, they begin around the 1:51:24 mark in the video. Rep. Mulvaney's comments (which also refer to the issues in Tarrant and mentioned in Jeff's attached email) can be found around the 1:39:59 mark in the video.

Per our request, Rep. Palmer did not enter the referenced affidavit used in his remarks into the record nor released the name of the affiant. The May 19th hearing was the initial role out of the affidavits. As David Roberson and I have been discussing with his office, Rep. Palmer plans to delve more into this issue in an upcoming hearing with Administrator McCarthy. In that hearing, he plans to have several of the residents as well as Mayor Tuck and Dr. Mize, City of Tarrant School Superintendent, on video tape describing their interactions with EPA. This week, Rep. Palmer and his staff are working with the City of Tarrant and Get Smart to meet with the affiants and City representatives for video statements.

**EPA Activities**

Although we cannot confirm this at this time, we have been told by various parties that have been meeting with EPA that Region 4 will not be moving forward with the investigation into Tarrant. Per our information, given the sampling results of the Phase 1 sampling and the push back from the Tarrant residents and city representatives, EPA does not believe pursuing any further investigation of Tarrant would be beneficial. EPA is scheduled to issue their final report and response to the GASP petition within the next 6 weeks. However, those in contact with EPA have been told that Region 4 will be refocusing its efforts on the North Birmingham superfund site and looking to expand the superfund site south into the Norwood/Kingston areas based on the recent sampling performed in March. In addition, it is our understanding that Councilor Lundy is pushing EPA to begin assessing the Hooper City and ACIPCO neighborhoods to determine whether the superfund site should be expanded into those areas as well. It is not clear at this time as to whether EPA is interested in assessing these areas.

Related to this, on May 20<sup>th</sup>, EPA announced it would be providing two grants totaling \$600,000 to Birmingham and Tarrant. Specifically, Birmingham will receive a \$400,000 community-wide assessment grant and Tarrant will receive a \$200,000 clean up grant for the Tarrant Industrial Complex. (See links: <https://www.epa.gov/newsreleases/epa-announces-600000-assess-and-clean-contaminated-sites-transform-and-uplift> / <http://abc3340.com/news/local/epa-money-will-help-revitalize-birmingham-neighborhoods> ).

**CONFIDENTIAL**

**Balch-ORF-PRIV-003789**

2:17-CR-00419-AKK-TMP  
06/25/18 Jury Trial

DEFENDANT EXHIBIT 1221

Balch-ORF-PRIV-003789

**DX 1221 - 001**



Finally, it is our understanding Gina McCarthy, EPA Administrator, is scheduled to visit Birmingham in June. The purpose of the meeting is to visit the new EPA EJ outreach office recently established at Lawson State and tour the North Birmingham Superfund site and discuss EPA's "next steps" for the superfund site.

#### City of Birmingham

During the recent changes in committee assignments spurred by the new Mayor/Council legislation that was passed at the end of the legislative session, a new Environmental Justice (EJ) Committee made up of Parker (as the chair), Lundy and Roberson was formed by the Birmingham City Council (see attached scanned council committee sheet). We are currently gathering more information on this committee. Given the issues in North Birmingham/Inglenook and the surrounding areas (soon to include the Norwood/Kingston and potentially the ACIPCO and Hooper City neighborhoods), EPA's opening of two EJ outreach offices in Birmingham (Lawson State and North Birmingham) and activities by Parker and Lundy, this committee should be followed closely.

#### Community Outreach Activities

Given the above information, we have been working with our community outreach representatives and Get Smart to develop a strategy for the Kingston and Norwood communities. This past weekend and this week, community representatives began handing out literature concerning EPA's activities and fliers about Get Smart to the residents of those communities. (attached is an example of a flier that was used in Tarrant, a variation of this is being used in Norwood/Kingston). In addition, to ensure we stay current on any developments in those neighborhoods as well as the ACIPCO and Hooper City neighborhoods, community representatives have been attending and will continue to attend the monthly neighborhood association meetings for those areas. Likewise, community representatives have been attending the North Birmingham Citizens Coalition meetings as well to stay abreast of information provided to that committee by EPA, GASP, the City of Birmingham, as well as others, as it related to the North Birmingham Superfund site.

Let me know if you have any questions on any of the above. Thanks.  
Joel



Joel I. Gilbert, Partner, Balch & Bingham LLP  
1901 Sixth Avenue North • Suite 1500 • Birmingham, AL 35203-4642  
t: (205) 226-8737 f: (205) 488-5824 e: [jgilbert@balch.com](mailto:jgilbert@balch.com)  
[www.balch.com](http://www.balch.com)

**CONFIDENTIAL**

**Balch-ORF-PRIV-003790**

Balch-ORF-PRIV-003790

**DX 1221 - 002**

**From:** Wood, Jeff </O=BALCH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JEFF WOODA7B>  
**Sent:** Wednesday, May 18, 2016 1:23 PM  
**To:** Gilbert, Joel <jgilbert@balch.com>  
**Subject:** House Oversight Committee

---

Joel,

Here is a quick recap of the House Oversight Committee hearing this morning where Rep. Gary Palmer and Rep. Mick Mulvaney (R-SC) expressed concerns about EPA's actions in North Birmingham. Note that, after the hearing, Rep. Palmer called and mentioned the idea of a House hearing on this specific topic, perhaps a field hearing. He seemed to have a preference for a hearing in Washington that addressed a broader set of issues. The purpose of the hearing was to "examine how the U.S. Environmental Protection Agency (EPA) handles employee misconduct, and ways the Agency can improve its response to this ongoing problem." There were two witnesses: Stanley Meiburg (Acting Deputy Administrator of EPA) and Patrick Sullivan (Assistant Inspector General for Investigations at EPA). Many members attended and participated in the question and answer portion of the hearing. A video of the hearing is available at <https://oversight.house.gov/hearing/examining-employee-misconduct-at-epa/>.

Approximately one hour into the hearing, Rep. Palmer was recognized and given the opportunity to question the witnesses. He began by discussing the ongoing concerns with EPA actions in North Birmingham. He stated that, in his opinion, EPA employees have acted improperly by seeking access to property without the permission of the owner and intimidating occupants of the property to get information. He referenced an unnamed affidavit of a Tarrant resident alleging that an EPA employee intimidated them into signing a release for access to property, and that the EPA employee stated that the agency was seeking to shutdown the ABC Coke plant. Rep. Palmer described it as a "clear violation" for EPA employees to require a resident to sign a release to sample property that they did not own.

After reading from the release, Rep. Palmer asked the witnesses whether EPA disciplines employees who act in an "overzealous" manner. Mr. Meiburg responded that EPA takes action against employees who engage in misconduct. Rep. Palmer asked whether EPA "punishes or encourages" that kind of behavior. Mr. Meiburg stated that EPA investigates and takes appropriate action.

Rep. Palmer noted that there are several other similar affidavits, but that he would not be releasing those or disclosing names at this time. He then asked whether it is appropriate for EPA personnel to pressure and "intimidate" Alabama citizens into endorsing EPA's agenda. Mr. Meiburg responded that he is unfamiliar with the facts of this particular issue in Tarrant. In response, Rep. Palmer restated the facts that EPA forced a renter to give access to property in an intimidating manner and told them that the point of the investigation was to shut down a legal business. He asked whether EPA allows this conduct and whether he was aware that such instances take place. He also asked whether it is appropriate for EPA employees to seek to "shut down" a business that employs many people. Mr. Meiburg stated that EPA's job is to enforce the law.

Next, Rep. Palmer referred to his letter to EPA about the North Birmingham issues. In that letter, Rep. Palmer raised concerns with EPA's assertion of jurisdiction under CERCLA over "air deposition," as opposed to land disposal. In EPA's response, the agency cited a memorandum entitled "Restrictions on Communicating with Outside Parties Regarding Enforcement Actions" that EPA claims would not allow them to discuss details of the matter. Rep. Palmer expressed the concern that this EPA response undermines congressional oversight and that he intends to look closely at this matter. He also asked for permission to include his letter to EPA along with EPA's response in the hearing record, which was agreed to by the chairman.

A few minutes later, Rep. Mick Mulvaney (R-SC) also raised this issue during his remarks. Specifically, he mentioned the Alabama issue involving an "allegedly overzealous" EPA employee and noted that this is the kind of scenario that he hears about "all of the time." He described EPA employees as, at times, "overzealous" or as engaging in "shakedown."

**CONFIDENTIAL**

**Balch-ORF-PRIV-003791**

Balch-ORF-PRIV-003791

**DX 1221 - 003**



He then asked, has anyone at EPA ever been fired for engaging in conduct in that manner? Rep. Mulvaney clarified that he is referring to situations where an EPA employee "overreaches" in their conduct, noting the "temptation" to use the authority of government to "stick it to a person." Mr. Meiburg said he is not aware of a similar case involving a person who overused their authority and was fired. He said he would ask EPA staff to find out. Rep. Mulvaney also asked Mr. Sullivan (Inspector General's office) whether, in a situation like the one mentioned by Rep. Palmer involving an "overzealous" EPA employee and exceeded their authority, it would merit a review by the Inspector General. Mr. Sullivan said such a scenario "could" merit review, but he stated that the issue raised by Rep. Palmer has not yet been raised to the Inspector General's office. Other questions were raised about "what it takes to get fired from the EPA?" Mr. Meiburg discussed instances involving employment terminations at EPA.

This article briefly discusses Rep. Palmer's questions at the hearing, <http://www.thepostemail.com/2016/05/18/house-oversight-committee-conducts-hearing-on-epa-abuses-employees-convicted-of-crimes/>.

I would expect other articles on this topic.

FYI,  
Jeff



Jeffrey H. Wood, Partner, Balch & Bingham LLP  
601 Pennsylvania Avenue, NW • Suite 825 South • Washington, DC 20004-2601  
t: (202) 661-6345 f: (866) 226-1871 e: [jhwood@balch.com](mailto:jhwood@balch.com)  
[www.balch.com](http://www.balch.com)

Submitted by: Council President Johnathan Austin

Recommended by: Council President Johnathan Austin

RESOLUTION NO. \_\_\_\_\_

BE IT RESOLVED by the Council of the City of Birmingham in accordance with section Sec. 2-2-14 of the Birmingham City Code that the following committees and its members are hereby ratified as approved by the Council President:

**Administration / Technology**

Chair: Johnathan Austin

Committee Members: Steven Hoyt, Marcus Lundy

**Economic Development / Budget & Finance**

Chair: Marcus Lundy

Committee Members: Lashunda Scales, Johnathan Austin

**Education**

Chair: Valerie Abbott

Committee Members: Kim Rafferty, William Parker

**Utilities**

Chair: Jay Roberson

Committee Members: Valerie Abbott, Sheila Tyson

**Public Improvement and Beautification & Park & Recreation**

Chair: Sheila Tyson

Committee Members: Lashunda Scales, Steven Hoyt

**Planning & Zoning**

Chair: Kim Rafferty

Committee Members: William Parker, Valerie Abbott

**Public Safety & Transportation**

Chair: Steven Hoyt

Committee Members: Shelia Tyson, Kim Rafferty

**Governmental Affairs:**

Chair: Lashunda Scales

Committee Members: Johnathan Austin, Marcus Lundy

**Environmental Justice:**

Chair: William Parker

Committee Members: Marcus Lundy, Jay Roberson

**ADOPTED** this tenth day of May, Two Thousand and Sixteen.

Parking

Councilor
Jay
Roberson
Councilor
William
Parker
Councilor
Valerie
Abbott
Drive Way
Councilor
Sheila
Tyson
Pro-Tem
Steven
Hoyt
President
Johnathan
Austin

Councilor
Marcus
Lundy
Councilor
Lashunda
Scales
Councilor
Kim
Rafferty

## Offices

President Pro Tem Steven Hoyt	Council President Johnathan Austin
Councilor Marcus Lundy	
Councilor Shelia Tyson	
Councilor Lashunda Scales	
Councilor Kim Rafferty	
Councilor William Parker	
Councilor Valerie Abbott	
Councilor Jay Roberson	

**CONFIDENTIAL**

**Balch-ORF-PRIV-003796**

Balch-ORF-PRIV-003796

**DX 1221 - 008**



## Here are the FACTS:

As you may know, the Environmental Protection Agency (EPA) is in the Tarrant area testing soil. You might have heard different information about what could happen in Tarrant if the EPA considers the area a Superfund Site. However, Get Smart would like to give you the FACTS.

- **No money will be given to any resident to purchase a new home or for personal use**
- **Your property value will decrease**
- **You will not be able to sell your property**
- **The EPA will not give you any money**
- **Local businesses will be hurt**
- **Local school's attendance will decrease**
- **If you do NOT own the property, you can NOT sign the release to allow the EPA to test the property**
- **Your property value will decrease but you will still have to pay your current property tax**
- **If placed on the NPL list your property will be considered a toxic dump**
- **EVEN IF THERE IS NO CONTAMINATION OF YOUR PROPERTY BUT THE AREA IS DESIGNATED AS A SUPERFUND SITE OR PUT ON THE NPL LIST, THEN EVERYONE IN THE CITY OF TARRANT PROPERTY VALUE WILL PLUMMET**

If you have any questions or concerns, please contact Get Smart at 205-541-9297 or  
[GetSmartTarrant@gmail.com](mailto:GetSmartTarrant@gmail.com)